### Zoning Board of Appeals – Town of Spencer



### **Minutes**

Regular Zoning Board Meeting Tuesday, November 22, 2011 7:15 PM McCourt Social Hall Memorial Town Hall

The meeting was called to order at 7:15 p.m.

Zoning Board Members Present: Chair Joanne Backus, Clerk Allan Collette, Delores Kresco,

Associate Members Delores Kresco, and Alternate Albert Drexler.

Zoning Board Member Absent: None.

Staff present: Michelle Buck, Town Planner and Bea Meechan, Senior Clerk, ODIS.

#### **Old Business:**

A Continued Public Hearing – Bay Path Real Estates, LLC c/o Daniel Lemenager, 19 Woodchuck Lane, Spencer. Ms. Backus opened the hearing at 7:15 p.m. At the previous hearing, the Board asked the applicant to provide the plot plan, showing the distance measurements of the proposed house in relation to the original home, and also the distance of other structures on the property as well. The Board continued the hearing until tonight.

Note: The plan which Mr. Lemenager submitted tonight dated 11/21/2011 demonstrates all of the structures which are positioned next to each other, but there are no distance measurements being specified on the plan.

The Board members said they want to know the measurements of the structures. They don't think the Building Inspector (BI) will accept this plan without the measurements.

The following were questions and comments from the Board to the applicant:

Joanne B: She personally doesn't have any particular problem with the request; the property consists of a large piece of land (25 acres), no setback issue. The problem is that, Ms. Backus said, the BI denied Mr. Lemenager's building permit application, and he came to the Board to override the BI's decision. If the plan got approved as is - without the distance measurements, when the applicant submits the approved plan with the building permit application, the BI is more likely to deny the permit application due to insufficient information (lack of measurements), and has to come back in the front of the Board again.

Dan L: The house's footprint is approximately 4,050 sq ft. The special permit being requested is for allowing the original home to move to another location. He plans to submit the building

permit application with the approved special permit to the BI, and will submit the plan that shows the structures' location with the measurements to the Board later.

Dan L: It costs approximately \$1,800 for a full survey, plot plan. There is no guarantee that the Board will approve the request even when the plot plan is provided. He doesn't want to spend that much money and not get an approval.

Michelle B: The Board is supposed to approve the plan that is a "specific" plan.

Dan L: He argued that the proposed plan doesn't change any of the existing nonconforming. He explained that in order to apply for a building permit to construct a proposed home, he is required to obtain the special permit from the Board, to allow for the home to be moved and can be built on another location.

Joanne B: At the previous meeting, the Board clearly stated that the plan shall contain the distance measurements. Here tonight, two weeks later, you came in with the same drawing plan without measurements.

Dan L: The Board said the plan shall demonstrate where the proposed home will be located on the lot - on the property. The plan submitted tonight, had been revised recently (plan dated 11/21/2011); it isn't the same plan.

Allan C: You bought the property from the foreclosure, the Bank; there must have been a tape survey done on the property. The Bank must have some reference as to where the original home was situated on the property. You may want to look in to that.

Dan L: The original home was destroyed by the fire. The current Bylaw does permit the reconstruction of such home, and such reconstruction shall not increase the nature of the existing nonconformity substantially more detrimental to the neighborhood than the existing nonconforming structure.

Allan C: If the Board approved such plan, without the measurements information, the applicant may construct the home anywhere he wants because there are no measurements specified on the approved plan.

Albert D: He will not vote on this case. As he recalled, the Board has always required the dimensions and the measurements be on the plan. What if the applicant were to change his mind and move the proposed home to elsewhere on the property – it must have some conformity and definition.

Note: The applicant was frustrated and left the meeting at this point.

The Board thought the hearing should be continued to the next meeting. Mr. Drexler made a motion to continue the hearing to December 13, 2011. Mr. Collette seconded the motion and the vote was 4-0 in favor.

Ms. Meechan, ODIS staff, will inform Mr. Lemenager that the hearing will continue to December 13, 2011.

**B.** Continued Public Hearing – Cistercian Abbey of Spencer, Inc., and Spencer Brewery, LLC, 167 North Spencer Road. Ms. Backus opened the hearing at 7:45 p.m. At the previous meeting, the Board had some questions for the Town Counsel pertinent to the possibility of having the special permit be limited to the current owner/applicant only, and the Board would like to obtain the clarification from the Town Counsel first. The Board decided to continue the hearing to tonight.

Ms. Backus read an e-mail from Ms. Buck to Mr. Collette, dated 11/15/2011, which read:

"Alan, at the end of the ZBA meeting last week, you inquired about the ability to limit the Spencer Brewery special permit to the current owner/applicant and asked that this question be referred to Town Counsel. Typically, due to the cost of Town Counsel, requests are only sent if the answer can't be found with the existing resources. According to the Handbook of Land Use & Zoning Law (3<sup>rd</sup> Edition, 2011) by Attorney Mark Bobrowski, (p.287): "A special permit, unlike a variance, may be conditioned by limiting its duration to the term of ownership or use by applicant." This advice is also included in the Zoning Guidebook (2004, Mass Federation of Planning & Appeals Boards, Attorney Carol Rolf – p.9:12): "A special permit may be conditioned upon continuous ownership." The attorney for Spencer Brewery, Dennis Pojani, contacted me the morning after the hearing and indicated that limiting the permit to the current owners would be equivalent to a "no" for his clients, as it could lead to problems with their financing arrangements. One option may be to consider other ways of conditioning the permit that address your main concerns without limiting ownership (e.g. strictly limiting the size/scope of the brewery use)."

The following were discussions, questions and comments from the Board to the applicant:

Mr. Pojani: He agreed that the special permit can be on the duration. However any limitation under this case has to be based on the conditions of the special permit and the particular land, and have to have some relationship to the special permit's criteria. To simply just put limitations to a particular person, or the duration without having some further parameters tying into the criteria for the special permit, Mr. Pojani doesn't thinks it is allowable. He further addressed the following:

<u>First:</u> The Bank. The applicant's bank is looking for a mortgage on this property, and they will not finance the applicant if the special permit is limited to only the applicant.

<u>Second:</u> Industrial Business Park. The Board expressed a concern on this issue. Mr. Pojani said no one can increase the size of the brewery's building or other business' buildings on the property without obtaining a special permit from the Board first. Father Issac had addressed that the monastery has been here in Spencer for more than 60 years, and has the intention to remain in Spencer.

Mr. Collette: In terms of the financing, it is understandable; the Bank wants collateral for their money spent. He is concerned in regards to the setback requirements. If the Brewery section gets sold along with the area, this portion will be separated from the rest of the other businesses and the property. The property is within the Rural Residential (RR) district, he then asked of how the setback will be determined – with the portion that got sold, and the rest of the remaining portion on the property.

In reference to what Mr. Collette said above that, in the future if the brewery portion and its business area got sold, how this will affect the setback requirement in relation to the other business in the property. Ms. Backus said if Mr. Collette is concerned about the setback; the Board cannot discuss that because that is in the future. The applicant currently requests the special permit to construct the Brewery.

Mr. Drexler: In regards to this particular property, since it is being under the RR, and any changes proposed (e.g. change in the dimension of the building, or change in the use) would have to come back to the Board for a special permit.

Mr. Pojani: The applicant could not split the parcel without an approval from the Board.

If the brewery business got sold, there are other businesses on the property as well. Mr. Collette asked of how this will have an impact on the other businesses – the Board shall think about this.

Ms. Backus: That wasn't what the applicant asking for, the applicant requested the special permit to construct and operate the brewery business.

Mr. Drexler: The existing businesses are legal nonconforming, thus there is no impact to them. [He gave an example that if the jelly business is sold to another jelly company, the new owner doesn't require coming to the ZBA for another special permit. However, if it is sold to the company that does produce other product then the new owner is required to apply for a special permit from the Board].

Mr. Pojani: To whether the special permit is granted to the applicant, or the subsequent owners, they are constrained by what they are approved by the Board. What the applicant is asking for is to construct and operate the brewery.

Father Issac at this time would like to explain the past, present, and the future's plan of the monastery to the Board as follows:

- The monastery has been here in Spencer for the past 60 years. We hope the Brewery will add value to the Abbey and the Town. The community of the monks, throughout its existence to the present, the number of members can fluctuate between 60 and 90 members. It is reasonable that we will here for a long time.
- Based on the financial advisors, the projected revenues generate from the existing businesses rise in a slower rate than the projected expenses. We must do something about it, and after much research, the Brewery has appeared to be an ideal business for the

monastery here in Spencer. The Massachusetts Development Corporation has approved the bond to finance the project.

- The purpose of the project is to sustain to self-support the monastery, with this being said the structure is limited and so does the production of the brewery. The Board has a concern that the property will turn to be an Industrial Business Park. In order for a commercial entity to make a profit, the size of the structure must be increased, and any changes must obtain a special permit from this Board must go through the special permit's process with the Board.
- The Abbey in Spencer is the second largest monastery of men in the Order, and the odds of this monk community to go out of existence are unlikely.

Mr. Drexler: Is there a capital monastery that oversees other monasteries, or the monasteries are private subsidiaries of the Trappist? How does the organization work?

Father Issac: Each House – monastery is independent from each other, no one oversees each House. There is an Inspectional Service-like that goes back and forth to each House. At the international level, the highest authority in the Order of the group is a meeting of the Abbacy superior of the each monastery and abbacies. The administrative body resides in Rome.

The Abbey here in Spencer had moved from Rhode Island (RI) due to the fire, what happened to the property in RI after the move, Mr. Drexler asked.

Brother Thomas: The RI Abbey bought the property in Spencer prior to the fire. We sold the RI property to the local municipality, and now this is senior center living.

Mr. Collette: The Abbey made the agriculture connection to the 2,000 acres they have. For the agriculture aspect, Mr. Collette inquired as to the number of acres that would involve in the brewery's production.

Father Issac: The Abbey intends to convert at least 10 acres, from the 360 acres of hay production, to the brewery's production.

Mr. Collette commented the Abbey property is used for agriculture purposes as stated on the application submitted. If the Abbey starts to sell the property off in the future – we'll lose the agriculture portion, and that is the point he would like to make.

Father Issac said the Abbey uses the agriculture section for growing crops, and will grow hops for the brewery; it is valuable piece to us.

Ms. Backus opened the hearing for comments and questions from the public at this time:

Mr. Kurt Nordquist of 8 Gale Drive said he is in favor of the proposed plan. The Abbey has been here for several years, they just want to generate another type of income as a mean of self-support. They have done good things for the Town.

The Board and Mr. Pojani reviewed the draft decision prepared by Ms. Buck at this time. The following were changes/corrections requested by Mr. Pojani:

Page 1: First paragraph, change from "The applicants propose to construct a (insert size) square foot building ..." to "The applicants propose to construct a building, not to exceed 43,560 square foot ..."

Third paragraph, change from "Annual production is expected to be 10,000 barrels" to "Annual production shall be limited to the proposed building, and expected to reach 10,000 barrels by year five."

Page 3: Conditions 1: change from "The project shall be limited in scope and use to what is described in the plans and application materials submitted to the Board ..." to "The project shall be limited in scope and use to what is described in the plan and the above summary ..."

Condition 3: Addition conditions (limitation on ownership, etc). Mr. Pojani asked to omit this condition entirely.

Mr. Pojani explained as to why the Condition 3 should be left out, he said that the size of the building and the limitation of what the Board approved should be sufficient, and if anyone wants to expand the building therefore he/she must seek an approval from the Board first.

Mr. Collette said on that note, if he is still on Board and if the Brewery was to get sold, he is expecting for a substantial piece of land to go with the Brewery, and if anything other than that, it would be considered as circumventing, Mr. Collette commented.

With no further discussion, Ms. Kresco made a motion to close the hearing at 8:15 p.m. Mr. Collette seconded the motion and the vote was 4-0 in favor.

Ms. Backus announced members sitting in the voting were Mr. Collette, Ms. Kresco, and herself.

**Mr.** Collette made a motion to grant a special permit to Cistercian Abbey of Spencer and Spencer Brewery, LLC, 167 North Spencer Road, Spencer, and approved the special permit with description of application, findings, and conditions as follows:

Summary Description of Application: The Applicants propose to construct a building, not to exceed 43,560 square feet (footprint), adjacent to the existing business structures on the property located on Assessor's Map 59, Parcel 1 and to manufacture, warehouse and distribute beer and/or ale under the name "The Spencer Brewery" with accessory offices related to that business. This property is located in the Rural Residential (RR) Zoning District. The Spencer Brewery, LLC (the "Brewery") is a Massachusetts single member limited liability company whose sole member is the Cistercian Abbey of Spencer, Inc., aka St. Joseph's Abbey (the "Abbey"). The managers in charge of operating the Brewery are all members of and monks at the Abbey. The Brewery

and the Abbey are joint Applicants seeking special permits under the Town of Spencer Zoning By-Law ("By-Law") Sections 4.9.2.B.1, 4.9.3.C, and 7.2 to construct and operate a brewery on a portion of property which is subject of this Application (the "Abbey Property") utilizing certain appurtenant driveways, utilities and other services on the Abbey Property necessary for the operation of the Brewery in common with others. The Abbey will lease the Brewery structure and appurtenant rights to the Brewery. This Application requests a special permit for the alteration and/or extension of the structures under Sections 4.9.2.B.1 special permit for the alteration and/or extension of the uses under Sections 4.9.3.C., and Section 7.2 (Special Permits).

The existing use of the Abbey Property and structures thereon used for a farm and the businesses operating under the Trade names, the "Holy Rood Guild", the "Trappist Preserves" and the "Abbey Gift Shop" pre-date the adoption of zoning in Spencer and constitute pre-existing, non-conforming uses and structures. The pre-existing business uses include the following uses proposed to be engaged in by the Applicants: farming, manufacturing, warehousing, distribution and sale of products with accessory office uses. The proposed Brewery use and structures will be an extension and change/alteration to permitted pre-existing non-conforming uses and structures.

The present plan is for the Brewery to produce one "brew" per day, four days per week. Bottling is expected to take place once per week. Annual production shall be limited to the proposed building, and is expected to reach 10,000 barrels by year five. Existing wells on the Abbey Property are expected to produce water sufficient in quantity and quality for the Brewers needs based on most recent test results. The Abbey is investigating wastewater issues and will comply with all applicable state and federal regulations with respect to same. It is believed that an expansion of the Abbey's existing Title V waste disposal system will not be required (e.g. certain breweries have been granted permission to dispose of non-toxic wastewater from operations without treatment on fields), but the Abbey will meet any applicable legal requirements with respect to waste treatment. The Abbey estimates that five (5) to ten (10) truck trips per week would be needed to transport goods and product to and from the Abbey.

**Findings:** After the public hearing duly noticed and held on November 8, 2011 and November 22, 2011, the Spencer Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40 A., Sec. 9 the Spencer, MA, Zoning By-laws as described below:

Section 7.2:

### 1. That the proposed use is in harmony with the general purpose and intent of the zoning bylaw

Given the limited nature, magnitude and scale of the proposed Brewery structures and use, its isolated location which is nearby the existing industrial uses in the middle of 1,700+ acres owned by the Abbey, and its distance from other neighbors, the Brewery uses (1) will not intensify the pre-existing non-conforming use in terms of density or type of use; (2) will not impair the integrity of the zoning district or adjoining zones; and (3) will not be detrimental to the health, safety or welfare of the neighborhood or the Town of Spencer. For each of the foregoing reasons, the use is in harmony with the general purpose and intent of the By-Law and all applicable sections therein.

2. That the proposed use will not create undue traffic congestion nor unduly impair pedestrian safety.

Given the limited scope of the use and the limited amount of traffic to and from the Brewery, no material increase in traffic will occur. Traffic will access the Brewery through a state highway (Route 31) and a driveway located on the owner's property.

3. That the proposed use will not impair the integrity or character of the district or adjoining zones, nor will it be detrimental to the health, safety, or welfare of the neighborhood or the Town.

The proposed structure(s) are located within a parcel of land consisting of over 1,700 acres and will not be visible to or accessible by the public at large. The closest Abbey Property boundary line from the proposed structure is approximately 1,900 feet away and the nearest public way is approximately one (1) mile away. The topography and natural landscape of the Abbey Property cause the industrial buildings to be well screened from the public's view. No material noise or odors will emanate from the structures. The proposed use is consistent with the existing agricultural and Trappist jam uses (i.e. agricultural, manufacturing of consumable product, warehousing distribution and accessory offices).

Section 4.9.2.B.1 (Non-Conforming Structures)

## That the extension/alteration of structures is not substantially more detrimental to the neighborhood than the existing nonconforming structures.

Given the scope of the project and the site as described above, the proposed brewery will not be more detrimental to the neighborhood than the existing commercial structures on site, and the locations and dimensions of the proposed structures will not increase or intensify existing non-conformities.

Section 4.9.3.C (Nonconforming Uses)

# That the extension or change is not substantially more detrimental to the neighborhood than the existing nonconforming use.

The proposed use is consistent with the existing agricultural and Trappist jam uses (i.e. agricultural, manufacturing of consumable product, warehousing distribution and accessory offices), and as described above, will not be more detrimental to the neighborhood than the existing uses.

#### **Conditions:**

1. The project shall be limited in scope and use to what is described in the plans and the above summary and as conditioned herein. Any expansion of structures, additional structures, or change in use of the proposed brewery shall be subject to amendment of this approval. Additional permits and approvals may be necessary depending on the nature and scope of proposed changes.

2. Construction activities shall not commence until all required approvals and permits are obtained.

#### Ms. Kresco seconded the motion and the vote was 3-0 in favor.

Ms. Backus explained once the decision has been filed with the Town Clerk, staff from ODIS will mail the copy of the decision along with the instructions to the applicant, and also to all abutters.

With no further discussion, Ms. Kresco made a motion to adjourn at 8:30 p.m. Mr. Drexler seconded the motion and the vote was 4-0 in favor.

Submitted By:	
Bea Meechan S	Senior Clerk ODIS

### List of Documents used on November 22, 2011

- Special permit application from Bay Path Real Estates, LLC c/o Daniel Lemenager, for property at 19 Woodchuck Lane.
- Special permit application from Cistercian Abbey of Spencer and Spencer Brewery, LLC, for property at 167 North Spencer Road.
- The e-mail from Ms. Buck, dated 11.15.11, to the Board members.
- Draft description of application, finding, and condition prepared by Ms. Buck on Cistercian Abbey of Spencer.